



United Nations

Committee of Experts on International Cooperation in Tax Matters

**Report on the twentieth session
(virtual session, 22 June–31 July 2020)**

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Note

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Chapter I

Introduction

1. Pursuant to Economic and Social Council resolutions 2004/69, [2020/3](#) and [2020/4](#), the twentieth session of the Committee of Experts on International Cooperation in Tax Matters – originally scheduled to be held in New York from 27 to 30 April 2020 (see [E/2020/INF/4](#)) – was held in virtual informal meetings from 22 to 26 June 2020 and virtual follow-up meetings during July 2020. The virtual meetings were attended by 25 members of the Committee.
2. As an exceptional measure and for logistical reasons, observers did not participate in the virtual meetings but were invited to provide comments on papers provided to the Committee. Comments on the papers were referenced in discussions and provided valuable perspectives. In a number of cases, the papers for the Committee were provided by multi-stakeholder subcommittees.
3. The present report serves to summarize the Committee's discussions and decisions taken on the items set out in the provisional agenda of its twentieth session ([E/C.18/2020/1](#)):

Provisional agenda

1. Opening of the session by the Co-Chairs.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
 - (a) Procedural issues for the Committee;
 - (b) Report of the Subcommittee on Updating the United Nations Model Double Taxation Convention between Developed and Developing Countries;
 - (c) Tax and the Sustainable Development Goals;
 - (d) Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;
 - (e) Update of the handbook on selected issues for taxation of the extractive industries for developing countries;
 - (f) Dispute avoidance and resolution;
 - (g) Capacity-building;
 - (h) Environmental tax issues;
 - (i) Tax consequences of the digitalized economy – issues of relevance for developing countries;
 - (j) Tax treatment of official development assistance projects;
 - (k) Relationship of tax with trade and investment treaties;
 - (l) Other matters for consideration.
4. Provisional agenda for the twenty-first session of the Committee.
5. Closing of the twentieth session.

Chapter II

Organization of the session

Opening of the twentieth session and adoption of the agenda

4. On 22 June 2020, the twentieth session of the Committee of Experts on International Cooperation in Tax Matters was opened in a virtual informal meeting by the Co-Chairs of the Committee, Carmel Peters and Eric Mensah. The Director of the Financing for Sustainable Development Office of the Department of Economic and Social Affairs, Navid Hanif, gave welcoming remarks.

5. Mr. Hanif addressed the Committee's work in the context of the coronavirus disease (COVID-19) pandemic and stressed the need to recognize that the pandemic had created not only a health crisis but also a human crisis, an employment crisis, a humanitarian crisis and a development crisis of unprecedented scale and dimension. It necessitated unprecedented responses. He referred to two major recent virtual events: the high-level event on financing for development in the era of COVID-19 and beyond, held on 28 May, and the Financing for Development Forum meeting on financing and policy solutions to respond to COVID-19, held on 2 June. At both meetings members recognized that in the current situation and in the recovery from it, addressing abuses of tax systems was as important as ever.

6. Mr. Hanif noted that tax systems played a critical role in averting and responding to crises and to the resulting human and developmental costs. He emphasized the heightened need to address the unexpected, the consequences thereof in terms of taxes and the possibilities offered by tax systems to help to avert crises, soften their effect and contribute to recovery, in a way that also addressed inequalities within and between countries.

7. Mr. Hanif addressed the challenges and opportunities confronting the Committee. He stated that it was more important than ever to promote tax systems that were fair to business and sufficiently supported financing for sustainable development. He highlighted the importance of work on environmental taxation, including an emphasis on climate-smart approaches to post-COVID-19 recovery efforts. He also addressed other issues before the Committee and their increased importance in the current context.

8. Mr. Hanif thanked the Member States that had recognized the importance of the United Nations system's role in international tax cooperation, and had given generous financial support in 2019, in particular Norway. He further urged Member States involved in discussions about assistance to follow through with their proposals in this regard and reminded all in a position to do so that, for a relatively small investment, they could contribute to the value of what the United Nations could offer, in terms of furthering tax systems that were fair to all stakeholders and promoted sustainable development.

9. Ms. Peters thanked Mr. Hanif for his remarks and invited Committee members to bear in mind in their work the developments and suggestions addressed.

10. The Committee then adopted the provisional agenda and organization of work, (E/C.18/2019/4), with one exception. The Secretariat proposed that agenda item (k), Relationship of tax with trade and investment treaties, should not be dealt with further by the Committee within its current membership, owing to the need to discuss other urgent business, the limited time for discussion owing to the COVID-19 pandemic and the inability to work jointly with the secretariat of the Organization for Economic Cooperation and Development (OECD) owing to that organization's other commitments. The proposal was accepted.

Chapter III

Discussion and conclusions on substantive issues related to international cooperation in tax matters

A. Procedural issues for the Committee (agenda item 3(a))

11. The Coordinator of the Subcommittee on Procedural Issues, Stephanie Smith, referred to conference room paper E/C.18/2020/CRP.15, proposing that minority views be dealt with in two parts, with regard to: (a) identifying guiding principles for considering minority views in the United Nations Model Double Taxation Convention between Developed and Developing Countries; and (b) proposing a detailed procedure for the inclusion of minority views in the Model Convention.

12. The proposal regarding the guiding principles received support from the majority of the Committee members. Consensus was not reached, however, since some Committee members spoke against it, raising, among other issues, whether minority views should be subject to principles that did not apply to majority views.

13. After discussion, and on the basis of a majority view, it was agreed that the Subcommittee should work on a revised paper for further discussion and approval at the twenty-first session of the Committee. The Subcommittee should focus on redrafting the procedure for considering minority views.

14. A proposal on modalities for transmitting Subcommittee documents to the Committee was considered but further discussion on it was deferred to the twenty-first session. Editorial changes to the Committee's practices and working methods proposed in the paper were approved.

B. Issues related to the update of the United Nations Model Double Taxation Convention between Developed and Developing Countries (agenda item 3(b))

15. The Coordinator of the Subcommittee on the Update of the United Nations Model Double Taxation Convention Between Developed and Developing Countries, Ms. Peters, introduced this topic. She invited the Committee to approve the revised versions of three conference room papers that had been previously considered.

Beneficial owner

16. With regard to the first conference room paper, on the concept of "beneficial owner" (E/C.18/2020/CRP.6), the Coordinator explained that the Subcommittee, at its meeting held in the Netherlands in February 2020 and at its virtual meeting held in May 2020, had addressed the issues raised, including at the nineteenth session. The Secretariat then referred to some of the written comments, referring to recent court decisions in which the source State did not have to enquire about the person who might be the beneficial owner if the immediate recipient were not. The Secretariat considered that the decisions did not conflict with the changes proposed in the commentary, which did not impose any obligations on the source State to find the beneficial owner if the recipient of a payment did not qualify as such. The Secretariat noted that some of the other comments focused on the beneficial ownership of assets rather than on the specific issue discussed in the paper, such as the beneficial owner of dividends, interest, royalties and fees for technical services, a distinction explained in the proposed commentary (e.g., para. 12.6 of the commentary on article 10).

17. The subsequent discussion focused exclusively on the explanation in the paper as to why the Subcommittee had rejected suggestions to include a treaty definition of “beneficial owner” in the Model Convention. While some Committee members requested that such a definition be added, a show of hands indicated that a large majority supported the Subcommittee conclusion on the issue. As there were no other issues related to the paper, the Chair, Mr. Mensah, concluded that the changes to the Model Convention proposed in the paper had been approved by the Committee.

18. A member subsequently proposed that a minority view concerning the addition of a definition of “beneficial owner” be included in the Model Convention. Discussions also addressed how such a comment would fit in with the concept and practice of a minority view. The Chair invited the member to draft a paper on what would be considered a minority view on the issue to facilitate further consideration of whether the view should be included in the Model Convention, bearing in mind other discussions held at the current session and to be held at the twenty-first session.

Application of article 7 to engineering and procurement contracts

19. The Coordinator introduced the second conference room paper, on the application of article 7 of the Model Convention to engineering and procurement contracts (E/C.18/2020/CRP.7). There were no comments or objections, and the paper was therefore approved by the Committee.

Application of article 13(5) to transparent entities

20. The Coordinator introduced the third conference room paper, on the application of article 13(5) of the Model Convention in the case of alienation of participations held through transparent entities (E/C.18/2020/CRP.8). The written comments received from one observer country, expressing disagreement with the conclusion put forward in the paper, were noted. A member expressed support for the dissenting view and suggested that the two opposing interpretations of article 13(5) be reflected in the Model Convention. Other members disagreed with the suggestion. The Chair concluded that the majority supported the proposed changes put forward in the paper, and the changes were therefore approved. It was decided that the issue of including a minority view on the topic would be addressed in the context of the broader issue of including minority views in the Model Convention.

21. The Committee then considered five other papers presented for initial discussion.

Changes related to collective investment vehicles

22. The Coordinator introduced the first conference room paper (E/C.18/2020/CRP.9), which included a number of proposed changes to the Model Convention regarding tax treaty treatment of collective investment vehicles.

23. The Secretariat referred to conference room paper E/C.18/2020/CRP.27, which included and provided an explanation of two small technical corrections to paper E/C.18/2020/CRP.9. The two corrections were agreed upon.

24. A member proposed that the reference, in paragraph 7 of paper E/C.18/2020/CRP.9, to “a recognized pension fund to which the definition of recognized pension fund in subparagraph 1(g) of article 3 applies” could be replaced by a simpler reference to a “recognized pension fund”. The change was agreed upon.

25. Another member referred to written comments on the paper. The comments, which had been sent to and previously discussed by the Subcommittee, were on aspects of beneficial ownership for collective investment vehicles and the inclusion of recognized provident funds as a separate class of residents under article 4.1 without fulfilling the condition of being liable to tax. The Chair, however, indicated that there

was no need to discuss the comments at the time since the paper would be revised to include the changes referred to above and would be released publicly to allow for written comments to be sent to the Committee by 15 August. The comments could then be addressed by the Subcommittee at its next meeting and by the Committee at its twenty-first session.

Proposed changes to the commentary on article 5

26. The Coordinator and Jacques Sasseville of the Secretariat introduced and provided an explanation of conference room paper E/C.18/2020/CRP.10. Mr. Sasseville also described three small corrections proposed in paper E/C.18/2020/CRP.26.

27. Finally, the Secretariat referred to two written comments sent to the Committee by the African Tax Administration Forum. The Forum expressed support for paragraph 13 of the revised commentary, which dealt with the interpretation of the phrase “any other place of extraction of natural resources” found in article 5(2). The Forum also invited the Committee to consider including in the commentary special provisions to address the application of the permanent establishment definition with respect to the exploration and exploitation of natural resources. The Secretariat explained that the Subcommittee had already identified that question for future work, as indicated in paragraph 47 of conference room paper E/C.18/2020/CRP.12 (considered below).

28. In its second written comment, the Forum addressed the phrase “that are routinely concluded without material modification by the enterprise” in subparagraph (a) of article 5(5) of the Model Convention, which is explained in the commentary. The Forum suggested that the phrase should be deleted, arguing that it conflicted with the initial policy objective of article 5(5) as redrafted in 2017. After views were expressed for and against the proposal, it was decided that the Secretariat, in consultation with a member who had expressed support for deletion of the phrase, would prepare a separate paper on this suggestion for written comments and subsequent discussion by the Subcommittee.

29. The Chair indicated that the three corrections included in conference room paper E/C.18/2020/CRP.26 seemed uncontroversial and could therefore be adopted. The proposal was agreed upon.

30. The discussion turned to the references to minority views in various text boxes set out in conference room paper E/C.18/2020/CRP.10. A member argued that the views would need to be discussed by the Committee before it could be concluded that they were not shared by the majority. There were differing views among members in this regard, and it was agreed that written comments could be provided by members before the next Subcommittee meeting, in which they could indicate whether they supported what was referred to in the paper as minority views and could provide their reasons in that regard. The Chair concluded that work on the paper would progress through written comments and would be presented for approval at the next session.

Capital gains on offshore indirect transfers

31. The Coordinator then introduced the draft provision included in conference room paper E/C.18/2020/CRP.11 that allowed for source taxation of capital gains on certain offshore indirect transfers. The Secretariat referred to written comments sent by the observer for Spain who opposed the proposal but welcomed the narrowing of the scope of the previous proposal and the description of double taxation issues currently included in the paper.

32. Two members presented their written comments: one referred to a proposal for changes to paragraph 23 of the draft commentary included in the paper, reflecting

some of the challenges of eliminating double taxation through the mutual agreement procedure under paragraph 3 of article 25; the other expressed support for the suggestion to amend paragraph 23 and also suggested that the phrases “resources that are naturally present in that state” and “resources that are inextricably linked to the territory of a State”, which were used in, or with reference to, the proposed new provision in paragraph 17 of the paper, should be further clarified.

33. Another member responded to comments made on paragraph 23 by suggesting that the paragraph should also refer to the possible use of the mutual agreement procedure under a combination of paragraphs 1, 2 and 3 of article 25 in order to address a multilateral case, as envisaged in paragraph 38.4 of the OECD commentary on article 25. The member suggested that, in order to better address the risks of double taxation through the mutual agreement procedure, the commentary on the new provision on offshore indirect transfers could invite countries using that provision to consider adding the alternative provision found in paragraph 55.2 of the OECD commentary on article 25. The member indicated that he would send a written proposal so that the Subcommittee could compare it with the proposal in the written comments and consider which version should be included in the next version of the paper.

34. Various views were expressed on the value or otherwise of such a provision. One of the members considered it acceptable for the new provision to cover property such as cell phone licenses but was not convinced that there was a need, or support for it, to cover more.

35. Another member suggested that changes should also be made to the example in paragraph 22 of the proposed commentary to avoid referring to risks of double taxation of company B – an issue unrelated to double taxation of company A.

36. Another member yet supported the provision as drafted but thought that additional guidance could refer to the definition of licenses or permits to use natural resources that was proposed by the United Nations and some other international organizations for the purposes of preparing national accounts.

37. The Chair concluded the discussion of conference room paper E/C.18/2020/CRP.11 by inviting the Subcommittee to continue its work on the paper through written comments. It was agreed to invite stakeholders to send written comments on the paper. It was clarified that no decision had been reached on whether the proposed new provision, if adopted, would be included in articles of the Model Convention or in its Commentary.

Technical changes proposed for the 2021 update of the Model Convention

38. The Coordinator of the Subcommittee introduced conference room paper E/C.18/2020/CRP.12. She explained that the first section of the paper included proposals for changes to the Model Convention whereas the second section included issues that could not be addressed within the remaining term of the existing membership of the Committee but that the next membership could be invited to consider.

39. The discussion of the paper focused on written comments sent by two members concerning the four proposals set out below that were included in the note.

Source rule for article 18 alternative B

40. The member who provided written comments explained that, during its online meeting in May, the Subcommittee had changed its view on whether, in the absence of a source rule in article 18 alternative B, a country was effectively prevented from arguing that it could tax, under article 21(3) of the Model Convention, a pension payment that arose in its territory according to its domestic law. The member argued

that that was a difficult technical issue that should be further considered, especially as it applied to other provisions of the Model Convention. The member further recommended against a definitive conclusion on the issue, stating that it should be included, rather, in a list of issues for consideration by the next membership. Views for and against the approach were expressed.

Irrelevance of value added tax and/or goods and services tax registration for determining existence of a permanent establishment

41. A Member who provided written comments disagreed with the inclusion in the Model Convention of the proposed commentary change put forward in paragraph 9 of the paper and explained that, in his country, a tax form used for value added tax and/or goods and services tax (VAT and/or GST) registration purposes required a declaration as to whether the taxpayer carried on business at a particular location in the country, which could be relevant for the application of the treaty definition of permanent establishment. Another two members disagreed with the approach and thought that it was important to clarify that VAT and/or GST registration was irrelevant for determining the existence of a permanent establishment under a treaty. Another member yet indicated that that was not a problem in her country as VAT/GST registration was irrelevant for treaty purposes and that she preferred leaving the text as is.

Reference to full credit in paragraph 63 of the commentary on article 23B

42. A member who had provided written comments on the issue disagreed with the proposed deletion of a reference to full credit in paragraph 63 of the commentary on article 23B, as proposed in paragraph 24 of the paper. The member considered that it would be in the interest of developing countries to keep the option open. The view was supported by some members, although another member expressed doubt that any country would be willing to provide full credit in the situation described.

43. The Chair concluded discussion of the paper by inviting the Subcommittee to continue its work on the paper through written comments.

Application of article 12 of the Model Convention to software payments

44. The Secretariat introduced the topic by indicating that the first part of conference room paper E/C.18/2020/CRP.13 provided an update of the work done on the issue of the application of article 12 of the Model Convention to software payments, while paragraphs 16 to 18 contained proposals for specific issues and modalities for further work.

45. All members who spoke at the session proposed that work continue on the topic. Different views were expressed on what the focus of further work should be, however, and whether, given the practical importance of the work on the topic, the need for extensive consultation, the fact that the current membership of the Committee would be replaced in the middle of 2021 and the fact that live meetings were currently impossible, there was a need to recognize that there was a good chance that work on the issues mentioned above would not be completed before the terms of the existing members ended. Many members recommended that the Committee currently focus its attention on amending the existing definition of royalties so as to include a reference to software payments in the definition. For some of these, such a change could even be approved at the twenty-first session.

46. The Chair concluded that there was clear support for continuing the work on the topic. It was agreed, without prejudice to a final decision on the substantive issues, to use a written comment process to produce quickly a paper on the specific issue of the inclusion of software payments in the definition of royalties. The paper would include

drafting a proposal (to be submitted by two of the members supporting that suggestion, namely, Rajat Bansal and Carlos Protto), a policy discussion of that proposal and a discussion of its practical application, which would be drafted on the basis of the written comments by members on the proposal. The resulting paper would be circulated to stakeholders for their written comments and would be discussed at the next meeting of the Subcommittee, probably in September, with a view to presenting a paper to the Committee at its next session.

C. Tax and the Sustainable Development Goals: follow-up report (agenda item 3(c))

47. Harry Tonino of the Secretariat outlined work on taxation and the Sustainable Development Goals. He noted that the special meeting of the Economic and Social Council on international cooperation in tax matters, scheduled for April 2020, had been deferred to April 2021. The meeting was intended to focus on three areas: (a) taxation of the digitalized economy, including how different approaches could impact revenues, revenue collection and tax administration in developing countries; (b) inequality, with a special focus on redistributive policies, wealth taxation and supportive fiscal policies for the Goals to promote inclusive sustainable development; and (c) the informal economy and access to social protection for marginalized segments of the population in developing countries.

48. Mr. Tonino outlined the plans of the Financing for Sustainable Development Office with regard to capacity-building activities at the intersection of taxation and Goals, including: (a) a workshop on taxation of the digitalized economy (September 2020); (b) a workshop on tax and inequality, to be organized in late 2020, focusing on taxation of the informal economy; gender-responsive fiscal policies; and wealth taxation; and (c) a workshop on environmental taxation, to be organized back-to-back with a meeting of the Subcommittee on Environmental Tax Issues in late 2020 or early 2021.

49. Mr. Tonino recalled the message of the Secretary-General in which he had stated how the work of the Organization had been informed and reshaped by COVID-19 and had called for coordinated, multi-stakeholder engagement with specific policy actions to be taken by both developed and developing countries. In his report on the United Nations framework for the immediate socioeconomic response to COVID-19, the Secretary-General had outlined five concrete actions with a common denominator, which was that countries would need considerable resources not only to be able to bounce back from the crisis but also to be able to build a better society. In the ensuing discussion, members made repeated references to such resource-related concerns and to the need for coherence and certainty in tax policies and tax collection.

50. The Secretariat sought guidance on which areas of work on taxation and the Goals would be most relevant for developing countries, in terms of policy guidance and capacity development, in the light of COVID-19 response and recovery efforts. Areas mentioned included: (a) tax treaty issues (including base erosion and profit shifting); (b) transfer pricing; (c) taxation of the digitalized economy; (d) environmental taxation; (e) taxation of the extractive industries; and (f) illicit financial flows. Members also stressed the importance of addressing issues of: (i) inequality and wealth taxation-related aspects; (ii) tax reliefs and incentives; (iii) taxation of the informal economy; and (iv) indirect taxation.

51. Mr. Tonino stated that the agenda of the 2021 special meeting's agenda would likely need to be informed by a variety of topics related to taxation and the Goals, to address specific priorities of different countries and their unique responses to revenue challenges posed by COVID-19.

D. Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries (agenda item 3(d))

52. The Co-Coordinator of the Subcommittee on article 9 (Associated Enterprises): Transfer Pricing, Ingela Willfors and Stig Sollund, introduced conference room paper E/C.18/2020/CRP14, stressing the importance of transfer pricing for developing countries, especially in the light of budget constraints enhanced by the COVID-19 pandemic. Ms. Willfors reported on the previous two Subcommittee meetings, held in Nairobi from 2 to 4 December 2019 and in Vienna from 17 to 19 February 2020, thanking the hosts.

53. Ms. Willfors presented revised chapter B.2 on comparability analysis (attachment B.2), previously discussed at the nineteenth session, for discussion and final approval.

54. Ms. Willfors noted that changes to the chapter included additional practical guidance for developing countries, in particular drawing on the work outlined in the *Toolkit for Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses* of the Platform for Collaboration on Tax and expanding on that. She said the additional guidance was especially relevant for developing countries that lacked any comparable data as it would help them to use many of the tools presented. After discussion, the text was approved as drafted, subject (in this and other cases) to the usual process of editing supervised by the Co-Coordinator.

55. Ms. Willfors then presented revised chapter B.5 on group synergies and additional guidance on centralized procurement functions (attachment B.6), previously discussed at the nineteenth session, for discussion and final approval.

56. Ms. Willfors noted that the revised chapter provided guidance on group synergies and additional guidance on how to analyse the procurement function in the group and what transfer pricing methods could be used to determine arm's length remuneration for such functions. After discussion, the text was approved as drafted.

57. In addition, Ms. Willfors presented chapter B.9.4, on financial transactions (i.e., the part relating to guarantees only – attachment B.7). She noted that the main parts of the chapter had already been discussed and approved in previous sessions of the Committee and that only the remaining guidance on financial guarantees was now being presented for discussion and final approval. The examples in the chapter are addressed separately below. After discussion, the text was approved as drafted.

58. Last, Ms. Willfors presented chapter C.1 (attachment C). On the basis of discussion at the nineteenth session and other comments received, the Subcommittee had redrafted the text for discussion and final approval. The chapter comprised merged and updated former chapter B.8, on the general legal environment, and former chapter C.1, on establishing and updating transfer pricing regimes.

59. A member submitted written comments proposing the deletion of paragraphs C.1.3.2.6 and C.1.3.2.7 about an international consultancy body, as that was not further developed in the chapter or elsewhere in the Manual. In response, it was noted that the language was not prescriptive and did not impose any obligation; it did not address how such a body should be led or constituted, regionally or otherwise; and it was already referenced in the 2017 version of the Manual.

60. Another member noted that the chapter should address the potential risk of double non-taxation on downward adjustments if information were not shared with the other country involved in the transaction. The member had drafted text to address the issue and, after a brief discussion, the chapter was approved with two new paragraphs on downward adjustments – their exact placement to be determined as part of the editorial process.

61. Mr. Sollund then presented the Subcommittee's work on part A of the Manual on Transfer Pricing in a Global Environment (attachment A) for initial discussion. It had been revised on the basis of the 2017 Manual version to include more background on how multinational enterprises operated in an increasingly digitalized environment and to provide additional guidance on value chain analysis. Examples from business sectors – on fast-moving consumer goods and on the oil and gas sector – were added for illustrative purposes only.

62. Written comments were submitted from an observer, proposing the addition of a clear definition of value creation. While some members felt a definition of value creation would be helpful, they expressed doubts in general as to whether the concept could be clearly defined in the Manual, there being no agreed global definition and distinct differences in approach to relevant bases for taxation.

63. Other written comments from a member were also discussed, with the agreement that they could be discussed further at the subcommittee level and at the twenty-first session.

64. Mr. Sollund next presented introductory chapter B.1 (attachment B.1), for initial discussion. The chapter was revised to eliminate overlaps and repetitions, improve the flow and increase practicability. He also presented revised chapter B.2.4.7, on the relationship between transfer pricing and customs valuation (attachment B.3) for initial discussion. Changes made to the chapter served to update existing guidance.

65. Mr. Sollund then presented, for initial discussion, chapter B.4.2.10.1-7, with additional guidance on central sales functions (attachment B.5). He noted that additional guidance on sales and marketing functions was added to the chapter on intragroup services.

66. In addition, Mr. Sollund presented the examples for chapter B.9, on financial transactions (attachment B.7), for initial discussion. The main body of the chapter had been approved by the Committee, and only the examples were presented for initial discussion. Mr. Sollund stressed that such examples were for illustrative purposes only. He then presented chapter C.6 (formally C.4), on dispute avoidance and resolution (attachment C), for initial discussion. He noted the work carried out by the Subcommittee on Dispute Avoidance and Resolution on the handbook for dispute avoidance and resolution and indicated that the work was taken into account in order to avoid duplication or contradictions, with some members represented in both subcommittees.

67. A few members noted that more work should be done at the editorial level to coordinate chapter C.6 with the work on the handbook for dispute avoidance and resolution and that cross references to the handbook would be preferable to any repletion of material, especially with regard to instances in which the material was not directly relevant to transfer pricing. Further guidance had been added on advance pricing arrangements. Finally, attention was drawn to paragraph 14 of conference room paper E/C.18/2020/CRP.14, noting the possibility of removing part D (country practices) to the Committee website to confirm that its content had not been reviewed or approved by the Committee, unlike the rest of the Manual, in order to allow it to be updated more readily and make the Manual a slimmer volume in hard copy. Part D would still have the formal status of being part of the Manual. While no comment was made on the proposal at the virtual meetings, the matter remained open for further discussion at the twenty-first session.

68. The Chair, Ms. Peters, concluded that the Committee had approved four texts: chapter B.2, on comparability analysis; a revised chapter B.5, on group synergies and additional guidance on centralized procurement functions; chapter B.9.4, on financial

transactions (guarantees only); and chapter C.1 (with the agreed addition of the paragraph on downward adjustments).

69. The Co-Coordinator invited the Committee to submit written comments on the remaining texts and issues by 17 July 2020.

E. Update of the handbook on extractive industries taxation issues for developing countries (agenda item 3(e))

70. The Co-Coordinator of the Subcommittee on Extractive Industries Taxation Issues for Developing Countries, Mr. Mensah, presented a report on its activities and outlined its work. He invited the Co-Coordinator, Ignatius Mvula, to present each chapter.

71. Mr. Mvula presented the chapter on tax incentives (E/C.18/2020/CRP.21) for second review and approval. At the nineteenth session, the Committee requested that the chapter be expanded and that tax incentives be addressed in the context of the reform proposals regarding pillar two of the OECD/Group of 20 inclusive framework on base erosion and profit shifting – with a minimum tax rate to avoid profit shifting from high-tax jurisdiction to lower-tax jurisdictions. A section to that effect was added. After discussion, it was recommended that the description on pillar two not be expanded, but rather that mention be made of it without additional detail while the proposal was still under discussion. Paragraph 77 would be removed.

72. Mr. Mvula informed the Committee of comments received from the African Tax Administration Forum relating to so-called blacklisting. After discussion, it was agreed that the Subcommittee would review that and other Forum comments and, as appropriate, propose text, while avoiding controversial or political positions. Subject to that point, the paper on tax incentives in extractive industries was approved.

73. Mr. Mvula then presented conference room paper E/C.18/2020/CRP.22, on taxation of subcontractors and service providers. The issues covered included new partnerships and operating models, and characterization of income to be taxed (e.g. income tax), permanent establishment rules for subcontractors, and tax treatment of temporary imported machinery. The Subcommittee was invited to refine the draft and seek approval on it at the twenty-first session of the Committee.

74. Mr. Mvula introduced conference room paper E/C.18/2020/CRP.23, on production-sharing contracts. He stated that such contracts were prevalent in gas and oil industries, although some countries were considering introducing them in the mining sector. He invited Committee members to provide country experiences of on production-sharing contracts in mining in particular, which could serve as examples in the handbook.

75. Mr. Mvula recognized that the description of advantages and disadvantages for production-sharing contracts in many sections needed further refinement for a more balanced assessment of the pros and cons, to be addressed before the twenty-first session of the Committee.

76. Finally, Mr. Mvula introduced conference room paper E/C.18/2020/CRP.24, on financial transactions in the extractives industries, which dealt with issues such as intragroup financing, interest limitation rules, performance guaranties and farm-in/farm-out arrangements. The paper provided an examination of tax implications for each.

77. Public comments would be sought on all the papers by 7 August.

78. He noted the Subcommittee's intention to combine the auditing chapter with trade mispricing and the decommissioning chapter with a more general treatment of environmental issues.

F. Dispute avoidance and resolution (agenda item 3(f))

79. The Chair, Mr. Mensah, invited the Co-Coordinator of the Subcommittee on Dispute Avoidance and Resolution, Cezary Krysiak, to present the three papers under the agenda item.

80. Mr. Krysiak introduced chapter 5, on arbitration on the mutual agreement procedure (E/C.18/2020/CRP.2), for approval. The chapter had been revised by the Subcommittee, at its previous meeting at The Hague in February 2020, at which written comments and previous discussions had been taken into consideration. He referred to additional written comments recently sent by two members of the Committee, on which he invited discussion. The main points raised in discussion are summarized below:

(a) **Paragraph 2.** In written comments, a member expressed concerns about the reference, in paragraph 2 of the chapter, to arbitration being “an approach for which countries are showing increasing interest.” It was decided to delete that phrase from the paragraph;

(b) **Paragraph 12.** In his written comments, a member had observed that paragraph 12 inaccurately indicated that a taxpayer could choose not to accept an arbitration decision. It was decided that the paragraph would be amended to clarify that it was the mutual agreement implementing the arbitration decision that could be rejected by a taxpayer.

(c) **Section 5.3, on different views on the appropriateness of arbitration.** The written comments sent by a member raised concerns with the structure and drafting of section 5.3, including the lack of counterarguments to some of the alleged benefits. Views among the members varied on the issue. After discussion, it was decided that the overall structure of the section would be kept but that drafting changes would be proposed after consultation with the member raising the concerns.

(d) **Paragraph 34.** At the request of a member, it was agreed that paragraph 34 should be amended to avoid suggesting that the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting did not require the conclusion of a competent authority agreement regarding the conduct of arbitration proceedings.

(e) **Paragraph 36.** In written comments, a member suggested that the last part of paragraph 36 did not provide a satisfactory justification for the statement that the “competent authorities may wish to request the taxpayer’s consent before engaging in arbitration”. It was decided that the paragraph would be amended to provide justification on the basis of avoiding spending resources on arbitration in which the taxpayer was likely to reject the mutual agreement implementing the arbitration decision.

(f) **Paragraph 48.** At the request of a member, it was agreed that paragraph 48 should clarify that either competent authority could make a request to the Chair of the Committee for appointment of a missing arbitrator.

81. Subsequent consultations allowed for a revised draft of chapter 5 to be presented and agreed upon, with the Committee approving the amended chapter.

82. The Co-Coordinator then introduced chapter 6, on possible improvements to mutual agreement procedure (E/C.18/2020/CRP.3) for Committee approval. With no changes suggested, the chapter was approved by the Committee.

83. The Co-Coordinator presented the draft of chapter 2, on approaches to avoiding disputes (E/C.18/2020/CRP.1). for initial discussion. There were no comments, but a deadline of 15 August 2020 was set for written comments.

G. Capacity-building (agenda item 3(g))

84. The Secretariat briefed the Committee on the capacity-building efforts of the Financing for Sustainable Development Office on domestic resource mobilization, including how the strategy and schedule had been adapted owing to the COVID-19 pandemic.

85. Mr. Tonino provided an overview of events that had been conducted according to schedule in late 2019, including three technical cooperation workshops on double tax treaties, held in Ecuador, Peru and Indonesia in November 2019. Those events, benefitting from cooperation with partner organizations, including the Inter-American Center of Tax Administrations and OECD, saw participation of over 80 tax officials. In addition, reference was made to a regional workshop on transfer pricing, which had been held in Nairobi on 5 and 6 December 2019 and had been organized in cooperation with the Kenya Revenue Authority. The event was held back-to-back with the meeting of the Subcommittee on Transfer Pricing and benefitted from the expertise of Subcommittee members.

86. Mr. Tonino outlined the Secretariat strategy to implement events that could not be held in-person owing to COVID-19. Given worldwide travel restrictions and the need for social distancing, the strategy was structured around two main pillars: virtual workshops and online courses. With regard to the former, the Secretariat had launched a pilot programme with a regional focus on Latin America (where several in-person events had been scheduled), in collaboration with Committee members, OECD, the Inter-American Center of Tax Administrations and other regional experts. The first session (on the scope of tax treaties), was held on 17 June 2020 and was attended by 60 tax officials representing 10 Latin American countries. Three remaining pilot sessions were held on 1 July (on permanent establishment), 15 July (on taxation of services) and 29 July 2020 (on taxation of business profits). Through targeted questionnaires, the Secretariat monitored participant satisfaction with the pilots and scale up a similar format for other regions and topics.

87. Building on the lessons learned from the pilots, the Secretariat had tentatively scheduled three virtual events for 2020. The first was a workshop on taxation in the digitalized economy (9–11 September, originally planned for March 2020). Mr. Lennard highlighted that the objective of the workshop was to present developing country negotiators and advisers with the pros and cons of different approaches to taxing the digitalized economy, as well as guidance to better protect their tax base. The second comprised three joint United Nations-OECD courses on tax treaty negotiations (late 2020 or 2021, originally planned for summer 2020). The third was a workshop on environmental taxation, organized in coordination with the Subcommittee on Environmental Tax Issues (late 2020 or 2021, originally planned for June 2020).

88. As far as online courses were concerned, a new online primer on the mutual agreement procedure was developed, on the basis of on the relevant chapter of the handbook on dispute avoidance and resolution, as well as on materials from previous in-person training events on the mutual agreement procedure (Vienna and Dakar, 2019). As with other existing online courses on taxation developed by the Financing for Sustainable Development Office (on double tax treaties and transfer pricing), the course on the mutual agreement procedure would serve both as a stand-alone module and as a prerequisite to future in-person training.

89. Daniel Platz of the Secretariat updated the Committee on progress in the work of the platform for collaboration on tax, a joint effort by the secretariats of the United Nations, International Monetary Fund, OECD and the World Bank. Since the nineteenth session, the platform had made progress on three toolkits. The first, on taxation of offshore indirect transfers, was released in June after two rounds of public consultation. The second, on transfer pricing documentation, was opened for public consultation in September 2019 and was scheduled for publication in July 2020. Virtual workshops on comparables data for transfer pricing, held in March and April, demonstrated the strong interest of tax authorities for that issue. The third, on tax treaty negotiation, was scheduled to be released for public comments by the end of 2020. An expanded outreach programme surrounding the development and use of the toolkits was planned for August and September 2020 for all interested stakeholders. In addition, a new online integrated platform was developed to serve as a single point of reference for tax-related capacity development projects across the four organizations, organized by country. Finally, a virtual workshop on medium-term revenue strategies would be held in collaboration with the African Tax Administration Forum in 2020.

90. Mr. Platz also briefed the Committee on Office's capacity-building project on asset management, aimed at maximizing the service and revenue potential of government-owned assets in Bangladesh, Nepal, Uganda and the United Republic of Tanzania. Owing to COVID-19, in-person training events were transferred to online platforms and integrated with new training modules on crisis-resilient asset management. In 2020, the Office and the United Nations Capital Development Fund will also develop an online course and publish a joint manual on the topic.

91. Several Committee members commended the Secretariat for its ongoing work to build tax capacity in developing countries and recognized the efforts needed to adapt work modalities and schedules to the changing circumstances brought on by COVID-19. Ensuing discussion highlighted the likely impact of COVID-19 on future capacity-building activities in developing countries and the need for continuous dialogue among all relevant stakeholders.

H. Environmental tax issues (agenda item 3(h))

92. The Coordinator of the Subcommittee on Environmental Taxation Issues, Natalia Aristizabal Mora, summarized the activities undertaken since the nineteenth session, as outlined in conference room paper E/C.18/2020/CRP.16. The Committee was asked to consider three draft chapters for the forthcoming handbook on carbon taxation.

93. The Coordinator presented chapter 3 (designing a carbon tax) (E/C.18/2020/CRP.17) for final approval. It had been discussed at the eighteenth and nineteenth sessions and redrafted according to comments received. The chapter concerned the design of a carbon tax and was at the core of the handbook. It was divided into three subchapters. The first, subchapter 3A on the basic elements of a carbon tax, concerned who was going to levy the tax, what was going to be taxed (i.e. specific fossil fuels upon their production, sale and/or importation – under the so-called fuel approach, which was based on a tax on the volume or weight of fossil fuels, or actual carbon dioxide emissions released into the atmosphere – under the so-called direct emissions approach) and also touched upon the identification of the taxpayer and who bore the economic burden of the tax. The second, subchapter 3B, addressed setting a carbon tax rate. The third, subchapter 3C, dealt with addressing undesired effects on households and industries, which was effectively linked to the public acceptance of carbon taxation. She noted that the chapter had benefitted from comments from Canada (on the system currently enforced therein) and business representatives.

94. Committee members commended the Coordinator and Subcommittee for the progress on the ambitious project, new to the Committee's experience and especially relevant in view of COVID-19 response and recovery. The Coordinator thanked all contributors, in particular the Government of Sweden, for supporting the work of the Subcommittee and providing personnel to work on the chapter. The Committee approved chapter 3.

95. The Coordinator then presented for initial discussion draft chapter 2 of the handbook (introduction for policymakers) (E/C.18/2020/CRP.19). The chapter provided an overview of environmental issues posed by carbon emissions. The characteristics and opportunities related to those issues, carbon pricing and two main approaches for carbon pricing (i.e. carbon taxes and emission trading systems) were highlighted in the chapter.

96. The chapter also provided the main reasons for introducing carbon taxes, such as protection of the environment, promotion of non-carbon products and raising revenues, as well as the main policy considerations countries should take into account when introducing carbon taxes, such as administrability, carbon pricing certainty and the potential unwanted effects on equity and commercial competitiveness.

97. The Coordinator asked members to consider whether the definitions of environmental taxes and environmentally related taxes, currently referred to briefly in the main body of the chapter, should be further expanded in an annex to the chapter; and whether an annex on the international framework regarding environmental protection and climate, as the one presented to the Committee attached to the chapter, was required, recognizing that the chapter already included references to such international frameworks, in particular on how such measures related to the Goals and the wider work of the United Nations.

98. In discussions, it was recommended that the simple definitions of carbon tax, environmental tax, and environmentally related taxes be retained, as they had been reflected in the main body of the chapter, without the need for further expansion of such concepts in an annex; and that the annex on the international framework regarding environmental protection and climate be retained.

99. It was decided that further written comments on chapter 2 from Committee members and others could be submitted until 7 August 2020. On the basis of discussions at the session and the comments, the Subcommittee would produce another draft for a second discussion at the twenty-first session.

100. Finally, the Coordinator presented for initial discussion a draft of chapter 4 (from design to administration: practical application of a carbon tax) (E/C.18/2020/CRP.18). The chapter, linked to the chapter on the design of a carbon tax, served to depict the most common aspects of administration of carbon taxes, drawing from the practical experience of countries adopting different approaches (e.g. the Swedish "fuel approach" and the Chilean "direct emissions" approach).

101. It was decided that further written comments on chapter 4 from Committee members and others could be submitted until 7 August 2020. It was also decided that, in view of the discussion at the session and the comments, the Subcommittee would produce another draft for a second discussion at the twenty-first session.

I. Tax consequences of the digitalized economy: issues of relevance for developing countries (agenda item 3(i))

102. The Co-Coordinator of the Subcommittee on Taxation of the Digitalized Economy, Aart Roelofsen, opened the session by giving an update on the work of the

Subcommittee, as outlined in conference room paper E/C.18/2020/CRP.25. Mr. Roelofsen further provided an update on relevant OECD/Group of 20 inclusive framework developments. The Co-Coordinator of the Subcommittee, Babatunde Fowler, and Mr. Lennard then outlined comments received on the work of the Subcommittee from various stakeholders.

103. Mr. Fowler highlighted that, while advertising services are important, they should not be the sole focus, as the United Nations should provide a wider view on how business operated and the type of taxes and revenues that could be derived by developing countries. Mr. Fowler noted that even in face of the COVID-19 pandemic, businesses had not completely stopped, and many operations were being maintained without the need for a physical presence in local developing countries. He noted the importance for developing countries of the consumption or market side being given due consideration when taxing rights were considered, recognizing in particular the interest of some countries in the “significant economic presence” approach.

104. It was noted that a member, Rajat Bansal, had submitted a written proposal (E/C.18/2020/CRP.25, attachment 2). Another member, José Troya, had also submitted a proposal for consideration by the Committee at the previous session.

105. Mr. Bansal explained that his proposal drew upon elements of the OECD/Group of 20 inclusive framework unified approach but was aimed at being simpler in order to administer and to provide a definite and significant amount of revenue for market countries. It was also aimed at removing complexities by having determination of the taxable amount for market jurisdiction done at the level of the specific market country, as opposed to the multilateral procedure suggested by the unified approach. Moreover, double taxation relief was proposed on a bilateral basis, also taking corresponding adjustments under article 9(2) of the Model Convention into consideration. Further, the proposal would only apply to automated digital services, and no global threshold would be set. The approach proposed by Mr. Bansal would be facilitated by a new article in the Model Convention and would address the new nexus and taxing right allocation rules.

106. Mr. Troya said his proposal also followed the approach of drawing on some elements of the unified approach but entailed a simplified approach for implementation by developing countries. In his view, the convergence between his proposal and the proposals presented by Mr Bansal and other members would be a form of withholding tax. The proposal to draft a new article for inclusion in the Model Convention allowing for a withholding tax received the support of other Committee members.

107. Issues raised in discussions included the complexity of most current proposals, especially for developing countries to implement; the related need to consider withholding tax options set as a reasonable rate; whether consumer-facing businesses should be included in the scope of any new rules; the need for the Committee to produce a new and independent proposal regardless of the progress made by the OECD/Group of 20 inclusive framework (but bearing in mind wider developments), and to bear in mind countries not represented in the inclusive framework and their situations and concerns; and the urgent need for funding for COVID-19 response and recovery, which purely (and inherently slow) multilateral efforts might not sufficiently be able to address. Those in favour of drafting a treaty provision felt that the problem was sufficiently well-defined to proceed with the drafting and that work undertaken in other forums could be drawn upon, where relevant, to prevent unnecessary duplication.

108. Other members provided counterproposals regarding other sources of revenues that could be explored instead of imposing additional taxes on multinational enterprises and pointed out that, in practice, corporate income taxes were not the main source of revenue for many countries. Moreover, withholding tax proposals would need to deal with issues such as the treatment of losses, scope of application and

interaction with article 2, and double taxation relief. The point was made that the Committee should avoid arriving at “unprincipled” solutions – clarity on what was being sought and its practicalities before drafting commenced was important, including a clear definition of the problem and the scope of application of the provision. Other members expressed the view that what might first seem simple would become more difficult and complex when discussed in detail and that the distinctly different views countries held on taxing rights would not easily be reconciled, whatever the proposal. A member expressed the concern that the draft still to be developed might not be compatible with the expected outcome of the work of OECD/Group of 20 inclusive framework, which, given the fact that the framework comprised 137 members, could create a difficult situation. Another member expressed the alternative view that the Committee had decided to work independently on those issues, while taking the work of other forums into account, and noted that the United Nations had a membership of 193 Member States.

109. There was a widespread view that an effective solution in the context of the Model Convention would need to be accepted not only by developing countries but also, at least, by some of their treaty partners. The limited relevance of a Model Convention provision for countries without wide treaty networks was noted, despite its having some indirect potential policy guidance role for domestic law – a member noted that such a provision could play a role in reducing differences in unilateral measures and thereby help to reduce uncertainty and double taxation.

110. Many members expressed support for drafting a new treaty provision. A group consisting of some of those members was formed, under the co-coordination of Mr. Bansal and Mr. Protto, to draft an initial proposal by the end of July 2020. It was agreed that only the members expressing support for the drafting a new provision would take part in the work.

111. The proposal would then be submitted and discussed more generally by Committee members prior to discussion at the twenty-first session, to be held in October. It was subsequently decided that the Subcommittee (with the possibility of the participation of Committee members who were not currently part of the Subcommittee) would meet to discuss those issues from 25 to 27 August 2020.

112. It was recognized that the work of the drafting group was without prejudice to the inclusion or otherwise of any provision in the Model Convention and that it should take on board not only the calls in favour of such a provision, but also relevant discussions about clarifying objectives and recognizing practical complexities.

J. Tax treatment of official development assistance projects (agenda item 3(j))

113. The Coordinator of the Subcommittee on the Tax Treatment of Official Development Assistance Projects, Marlene Parker, first reported on the joint technical meeting between the Subcommittee and the OECD Development Assistance Committee, which had been held in Paris in February 2020 and was followed by a three-day meeting of the Subcommittee. The first session of the joint meeting with Development Assistance Committee was focused on the empirical data related to the impact of granting exemptions for official development assistance (ODA) projects as well as the various policies adopted by donors in that area. The second session was focused on what the Development Assistance Committee could do on various topics related to the issue of transparency of tax exemptions for ODA projects.

114. The Development Assistance Committee agreed to work on specific proposals to ensure greater transparency for the tax provisions of treaties or other agreements related to ODA. It was also agreed that a voluntary pilot project would be carried out

for reporting the policies of Development Assistance Committee members on an ODA project concerning tax exemptions – helping recipient countries to determine the revenue impact of the exemptions. The third session of the meeting dealt with the work of the Subcommittee, including guidelines on the tax treatment of ODA projects. During that session, it was clarified that the guidelines were non-binding and were intended to assist countries in deciding whether tax exemptions should be granted for ODA projects and, if they were, how they should be negotiated and designed.

115. The Coordinator indicated that the Subcommittee sought a continued dialogue with the Development Assistance Committee. She also reported that Attiya Waris of the University of Nairobi and Iain Steel of the Overseas Development Institute had recently joined the Subcommittee.

116. The Secretariat then introduced conference room papers E/C.18/2020/CRP.4 (revised version of the guidelines) and E/C.18/2020/CRP.5 (draft recommendation on the public disclosure of provisions granting tax exemptions with respect to ODA projects), which had resulted from the three-day meeting of the Subcommittee. The papers were presented to the Committee for initial discussion and for approval of the release of the revised guidelines for public comment. The changes made to the guidelines had resulted from previous discussions by the Committee as well as written comments received on the previous version. The changes, among other things, reinforced the purely non-binding character of the guidelines, replaced the proxy previously used to refer to the concept of permanent establishment by a reference to the definition of that concept in the United Nations and OECD models, made a clearer distinction between the guidelines and the internationally agreed principles to which they referred and clarified that the guidelines did not affect in any way the application of tax treaties. Given the wide consensus that provisions of ODA treaties or agreements providing for tax exemptions with respect to development assistance projects should be publicly disclosed, the proposed recommendation included in paper E/C.18/2020/CRP.5 was intended to reinforce guideline 6 and provide stronger guidance in that area without imposing binding obligations.

117. A member observed that the revised guidelines referred to the 2030 Agenda for Sustainable Development. The member commented that countries should not rely on the 2030 Agenda to find new sources of revenues. The Secretariat recalled the Committee's approach to putting its work, including on tax exemptions for ODA projects, in the overall context of the 2030 Agenda and efforts to achieve the Sustainable Development Goals.

118. Another member, while supportive, asked for clarification. Noting that the mandate of the Subcommittee referred to ODA projects and that the term "ODA" was developed by OECD to refer to assistance projects that were covered by the OECD Development Assistance Committee framework, the member asked whether papers E/C.18/2020/CRP.4 and E/C.18/2020/CRP.5 applied only to assistance projects covered by the Development Assistance Committee framework or whether they would also cover other cooperation projects. In response to that intervention, the Coordinator and the Secretariat indicated that the term had been used to avoid the need to define government-funded assistance projects covered by the guidelines. Issues as to the scope of the guidelines would need to be clarified by the Subcommittee and the Committee.

119. Another member also expressed support for the work of the Subcommittee but raised the following concerns and questions:

(a) Whether there was any intended difference between the guidelines and the proposed recommendation in paper E/C.18/2020/CRP.5, with respect to which the member had reservations, and whether such a recommendation would have any binding effect;

(b) Difficulty in understanding whether the proposed recommendation only dealt with one aspect of what the guidelines referred to as transparency, which was the public disclosure in recipient countries of provisions granting tax exemptions. While there were good reasons to support such disclosure in recipient countries, it was more difficult to understand why the recommendation proposed the setting up of a central repository for that purpose;

(c) Guideline 5 raised concerns as it went beyond the public disclosure of provisions granting tax exemptions and encouraged donors to develop, review periodically and make publicly available their policies concerning the payment of taxes related to their ODA projects. Also, the explanations provided with regard to guideline 5 (such as in paragraph 43) were not convincing or helpful.

120. In response to the comments, the Secretariat sought to clarify the difference between a recommendation, which would establish the Committee's position on the issue of disclosure of provisions granting tax exemptions, and the guidelines, which were simply suggestions as to what countries should consider in their bilateral negotiations. The Secretariat and the Coordinator also provided the background for guideline 5 and for the reference to a public repository in the proposed recommendation, which both resulted from discussions during the joint meeting with the Development Assistance Committee.

121. Another member expressed support for the guidelines, as being important for small countries like his own, and urged the Committee to adopt them as soon as possible given that the current Committee membership would be changing in 2021.

122. In response to the explanations, the member who had first expressed concerns about the proposed recommendation suggested deleting the last part of the preamble of the recommendation as well as the second paragraph of the recommendation and proposed changes to guideline 5 and its explanations to make it more balanced and less prescriptive.

123. It was decided that, in order to address the various concerns raised during discussion, the Subcommittee, through an exchange of emails, would revise both papers and submit a revised version of paper E/C.18/2020/CRP.4 to the Committee, under written procedure, for approval of its release for public comments in advance of the twenty-first session.

K. Relationship of tax treaties with trade and investment treaties (agenda item 3(k))

124. As noted, in considering its agenda the Committee agreed with the Secretariat that further work should not be done on the subject at the Committee level, in view of other priorities and the other commitments of the secretariats of the United Nations and OECD. It would therefore not be added to the agenda for the twenty-first session.

L. Other matters for consideration (agenda item 3(l))

125. The Committee endorsed the importance of Committee guidance, such as models, manuals and handbooks, being published as quickly as possible in the six official languages of the United Nations. It had been noted that conference services, including interpretation, had not been available for these informal virtual meetings, but the importance of interpretation for such meetings in future, if at all possible, was also noted by the Committee.

126. The Secretariat noted that the twenty-first session was scheduled to be held in Geneva from 20 to 23 October 2020. The Secretariat would keep the Committee informed of any changes as a result of COVID-19.

Chapter IV

Matters calling for action by the Economic and Social Council

Draft decision for adoption by the Council

127. The Committee of Experts on International Cooperation in Tax Matters recommends that the Economic and Social Council review and adopt the following draft decision:

Venue, dates and provisional agenda of the twenty-first session of the Committee of Experts on International Cooperation in Tax Matters

The Economic and Social Council:

(a) Taking into account the continued impact of the coronavirus disease (COVID-19) on the working arrangements for the 2020 session of the Council and the sessions of its subsidiary bodies, decides that the twenty-first session of the Committee of Experts on International Cooperation in Tax Matters shall be held in scaled-down, virtual format informal meetings between the dates of 20 October and 6 November 2020, with final modalities to be decided by the Co-Chairs, following consultations with the members of the Committee, and that the decisions of the Committee of Experts shall be adopted under silence procedure;

(b) Approves the provisional agenda of the twenty-first session of the Committee of Experts, as set out below:

Provisional agenda

1. Opening of the session by the Co-Chairs.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
 - (a) Procedural issues for the Committee;
 - (b) Report of the Subcommittee on Updating the United Nations Model Double Taxation Convention between Developed and Developing Countries;
 - (c) Tax and the Sustainable Development Goals;
 - (d) Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;
 - (e) Update of the handbook on selected issues for taxation of the extractive industries for developing countries;
 - (f) Dispute avoidance and resolution;
 - (g) Capacity-building;
 - (h) Environmental tax issues;
 - (i) Tax consequences of the digitalized economy: issues of relevance for developing countries;

- (j) Tax treatment of official development assistance projects;
 - (k) Other matters for consideration.
4. Provisional agenda of the twenty-second session of the Committee.
 5. Arrangements for adopting the report of the Committee on its twenty-first session.

